

From: (b) (6), (b) (7)(C)
To: (b) (7)(E)
Cc: (b) (6), (b) (7)(C) (b) (7)(E)
Subject: Family Separation and Title 42
Date: Friday, March 12, 2021 1:52:53 PM

Chiefs and Deputies,

Consistent with Operation Capiro and CBP's *Ms. L. v. ICE* preliminary injunction guidance, members of a family unit must be processed collectively under Title 8 or Title 42. If a separation is warranted based on the factors outlined in the *Ms. L. v. ICE* preliminary injunction guidance, the separated parent(s) or legal guardian(s) may not be processed for expulsion, and all members of the family unit must be processed under Title 8.

To that end, it is imperative that in cases where the separation of a parent(s) or legal guardian(s) and their child is warranted, and the minor is transferred to the custody of HHS ORR, the separated parent(s) or legal guardian(s) must be excepted from Title 42 and processed appropriately under Title 8. In a case where separation of one parent or legal guardian in a two-parent family is warranted, and the other parent and child are processed under Title 8 as a FAMU, the separated parent or legal guardian must also be excepted from Title 42 and processed appropriately under Title 8. This is necessary to ensure that USBP has provided the groundwork to facilitate reunification at a later date, if appropriate.

As a reminder, any separation must be documented in the e3 Family Panel and in the narrative of the I-213. Additionally, the narrative must include the reason for the separation, name and title of authorizing official and the factors supporting the decision to separate. Furthermore, if the Office of Chief Counsel was consulted in order to reach a determination, that information must be included in the narrative.

Finally, it remains a requirement for USBP to provide HHS with the name, A# and date of birth of the separated subjects and the location to which the separated parent/legal guardian was manifested. A physical copy of CBP Form 0852 is to be provided to the separated parent/legal guardian at the time of separation.

To reiterate:

Members of a family unit must be processed together under Title 8 or Title 42, unless separation is warranted based on the factors outlined in the *Ms. L. v. ICE* preliminary injunction guidance. If a separation is warranted in accordance with the *Ms. L. v. ICE* preliminary injunction guidance, the separated parent(s) or legal guardian(s) may not be processed for expulsion under Title 42, and all members of the family unit should be processed under Title 8.

Staff may direct questions to their local Office of Chief Counsel or

(b) (7)(E)

Acting Deputy Chief (b) (6), (b) (7)(C)
United States Border Patrol
Law Enforcement Operations
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RRB

(b) (6), (b) (7)(C)

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